

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

FOOTHILL WASTE RECLAMATION, INC. 1/
Employer

and

Case No. 31-RC-7764

PACKAGE & GENERAL UTILITY DRIVERS
LOCAL UNION 396, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 3/

INCLUDED: All drivers (including the working foreman/rover), swampers, mechanics, yardpersons, welder/painter/bin repairmen and dispatchers, employed by the Employer at its Pacoima, California facility.

EXCLUDED: Office clerical employees, outside salespeople, professional employees, managerial employees, all other employees, guards and supervisors, as defined in the Act.

DIRECTION OF ELECTION 4/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the issuance of the notice of election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by *Package & General Utility Drivers Local Union 396, affiliated with the International Brotherhood of Teamsters, AFL-CIO.*

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the FULL names and addresses of all the eligible voters shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the office of Region 31, 7th Floor, 11150 West Olympic Boulevard, Los Angeles, California 90064, on or before, **September 1, 1999**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **September 8, 1999**.

DATED, at Los Angeles, California, this 25th day of August ,1999.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31

FOOTNOTES

- 1/ The name of the Employer appears as corrected at the Hearing.
- 2/ The Employer, a Delaware corporation, with a principal place of business in Pacoima, California, is engaged in the business of providing waste hauling and recycling services. During the past calendar, a representative period, the Employer purchased and received goods valued in excess of \$50,000 directly from entities located outside the State of California. Based on the foregoing, I find that the Employer satisfies both the statutory and the Board's discretionary standard for asserting jurisdiction over non-retail enterprises. *Siemons Mailing Service*, 122 NLRB 81 (1959).
- 3/ The Employer's operations are managed by three brothers, who serve as the Employer's President, Vice-President and Secretary/Treasurer. They assign the routes, handle customer complaints and handle personnel matters, including the hiring, firing, scheduling, and disciplining of employees. The parties stipulated, and I find, that the bookkeeper, outside salespersons and guard should be excluded from the unit.

The Union petitioned for a unit of drivers, mechanics, swampers, welders, yardpersons, bin repair, and painters. At the hearing, the Employer questioned the unit placement of the working foreman/rover, the dispatcher, the mechanics, the welder/painter/bin repairman and the yardman. However, in its post-hearing brief, the Employer now takes the position that these classifications should be included in the unit. At the Hearing, the Union appeared to take the position that *if* the dispatcher has supervisory duties he should be excluded. In its brief, the Union did not specifically state its position with respect to the unit placement of the dispatcher.

The Employer employs about 15 drivers, some of whom drive "roll-off units" and some of whom drive "front-end loaders." The drivers of the roll-off units generally work on pre-assigned routes. They retrieve stationary dumpsters from various locations and dump them. The drivers of the roll-off trucks place tarps on large compactor or roll body units which are located at large factories or construction sites. They take the units to a landfill

or transfer station and then return them to the original site if they are still needed. There are about nine employees who are classified as swampers. They go with the drivers on the front-end loaders and assist in moving the dumpsters. Although employees classified as swampers do not drive, last year three swampers were promoted to the position of driver. The drivers and swampers are paid hourly and receive fringe benefits, including health insurance and paid holidays, vacation and sick leave.

There is one employee who is referred to as a *working foreman*, although he never has been officially given this title. He also is referred to as a *rover*. If a driver of a front-end loader or roll off truck is absent or unavailable to drive, the working foreman/rover takes his place. The working foreman/rover spends about 60% of his time as a replacement driver. When he is not working as a replacement driver, he drives a container truck or flat bed truck, delivering rental dumpsters. The working foreman/rover works hours which are similar to those of the other drivers, is paid on an hourly basis and receives the same fringe benefits as the drivers and swampers. There is no evidence that the working foreman/rover performs any supervisory duties.

There are two mechanics. Since they perform work on the trucks which are out during the day, they start their work day later than the drivers and swampers. The mechanics are paid hourly and they receive the same fringe benefits as the drivers and swampers. The mechanics have some interactions with the drivers, who report mechanical problems with the trucks to the mechanics, and at times when the mechanics respond to a call about a truck which has broken down in the field.

One employee works as a *welder/painter/bin repairman*. He refurbishes and repairs the dumpsters. He is paid on an hourly basis and receives the same fringe benefits as the other employees. There is one employee classified as a *yardman*. He spends about 95% of his time washing trucks. In the process of cleaning the trucks, he drives them a short distance to and from the steam cleaning area and the parking lot. While the trucks are out, he cleans the yard or facility. Since he must wait for the trucks to return to the premises, he works the same hours as the mechanics. He also assists the

welder/painter/bin repairman in cleaning the dumpsters. In addition, he fills in for swambers when they are absent. This occurs about one to two days each month.

There is one employee classified as a *dispatcher*, who formerly was employed as a full-time driver. The dispatcher opens the facility in the morning and makes sure that all the truck routes are covered. During the day, he answers calls and takes customer orders. The dispatcher communicates with the drivers by radio. Thus, for instance, if a customer decides that he no longer needs a bin to be removed, the dispatcher would radio the driver to skip that stop. Also, the drivers radio to the dispatcher if their access to a dumpster is blocked. Although he takes orders from customers over the phone, he merely passes the information on to a manager who schedules the work. The dispatcher continues to spend about 30% of his time driving trucks. In fact, he had worked full-time driving trucks the two to three weeks prior to the hearing in this matter. There is no evidence that the dispatcher has any supervisory authority. The dispatcher is paid on a salary basis and receives the same fringe benefits as the other employees.

Based on the record evidence, I agree with the Employer and the Union that the working foreman/rover, mechanics, yardman, and the welder/painter/bin repairman all share a sufficient community of interest to warrant their inclusion in the unit. The Employer's business is a small, integrated operation. These employees are all paid on an hourly basis, receive similar benefits and share common supervision. With respect to the working foreman/rover, I particularly note the absence of any evidence of supervisory authority and I note that he spends about 60% of his time driving. Therefore, I conclude that he should be included in the unit. With respect to the mechanics, I note the functional relationship that they have with the drivers, as well as the fact that they have daily contact with other unit employees, with whom they share the same supervision. Therefore, in view of their close community of interests with the other unit employees, I shall include the mechanics in the unit. *C.M. Carpenter, etc.*, 266 NLRB 907, 908 (1983); *Nichols Sanitation*, 230 NLRB 834, 835-36 (1977); *Norfolk, Baltimore & Carolina Lines*, 175 NLRB 209 (1969). Similarly, it is evident from the record that the yardman and the welder/painter/bin repairman share a close community of interest with the other unit employees.

Furthermore, I conclude that the dispatcher also should be included in the unit. In this regard, I particularly note that there is no evidence that the dispatcher exercises any supervisory authority and that he has contact with drivers during the course of the day and receives the same fringe benefits as they do. Moreover, he spends about 30% of his time driving. Accordingly, I find that the dispatcher shares a close community of interest with the other unit employees and shall include the him in the unit. See, *Browning Ferris Inc.*, 275 NLRB 292 (1985); *Norfolk, Baltimore & Carolina Lines*, supra at 209-210.

There are approximately 30 employees in the unit.

- 4/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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